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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

21

FILE: [REDACTED]
EAC 03 137 50051

Office: VERMONT SERVICE CENTER

Date: MAY 20 2005

IN RE: Petitioner:
Beneficiary:

[REDACTED]

PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF BENEFICIARY:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be rejected.

The petitioner is a church. It seeks to employ the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4), to perform services as an assistant pastor. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as an assistant pastor immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established that it qualifies as a tax-exempt nonprofit religious organization.

8 C.F.R. § 103.3(a)(1)(iii) states, in pertinent part:

(B) *Meaning of affected party.* For purposes of this section and sections 103.4 and 103.5 of this part, *affected party* (in addition to the Service) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition.

8 C.F.R. § 103.3(a)(2)(v) states:

Improperly filed appeal -- (A) Appeal filed by person or entity not entitled to file it -- (1) Rejection without refund of filing fee. An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.

The appeal has not been filed by the petitioner, nor by any entity with legal standing in the proceeding, but rather by the attorney for the beneficiary. Therefore, the appeal has not been properly filed, and must be rejected.

The attorney who filed the appeal claims to represent the petitioner as well, but the record does not contain Form G-28, Notice of Entry of Appearance as Attorney or Representative, designating the attorney as counsel for the petitioner. The record does contain a Form G-28 showing that the attorney represents the beneficiary, but because the beneficiary has no standing in this proceeding, this form does not give the attorney standing to file the appeal.

We note that, even if the appeal had been properly filed, it would then have been summarily dismissed. 8 C.F.R. § 103.3(a)(1)(v) states, in pertinent part, “[a]n officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.”

In this proceeding, the attorney for the beneficiary does not allege any Service error in the rendering of the decision. Instead, the attorney’s statement on appeal consists entirely of a request for an additional 60 days in which to submit a brief. This statement is dated November 5, 2003. To date, a year and a half later, the record contains no further submission from the attorney. Thus, even if the attorney properly represented the petitioner, the attorney has offered no substantive response to the grounds for denial. Absent any allegation of Service error, this appeal would have been summarily dismissed if it were not rejected.

ORDER: The appeal is rejected.